

(4) The exceptions set forth in § 1941.19(c) of subpart A of part 1941 of this chapter apply.

(5) These assets will be considered as additional security for the loans as well as any shared appreciation agreement. The value of the essential assets will not be included in the NRV calculation to determine restructuring. The Agency's lien will be taken only at the time of closing the restructured FLP loans.

[62 FR 10132, Mar. 5, 1997, as amended at 64 FR 62568, Nov. 17, 1999]

§ 1951.911 Homestead protection.

(a) *General.* If the Agency has only chattel property as security, preservation servicing will not be offered. Borrowers who submitted a complete application prior to April 4, 1996 will be considered for leaseback/buyback in accordance with the previous CFR volume containing revisions as of January 1, 1996 and Agency procedures, (available in any county office.) Inventory property which is located within the boundaries of an Indian reservation of a Federally recognized Indian Tribe and the previous owner is a member of the Indian Tribe that has jurisdiction over that reservation should be handled in accordance with § 1955.66(d) of subpart A of part 1955 of this chapter.

(b) *Homestead protection.* Borrowers and former borrowers who had or have an FLP loan secured by the real property containing the dwelling owned by them and used as their principal residence may apply for homestead protection before or after the Agency acquires the property. Real property that is in inventory as of the effective date of the statute or is acquired in the future will be considered for homestead protection as set forth in this subpart.

(1) *Purpose.* The purpose of the Homestead Protection Program is to permit borrowers or former borrowers to retain their dwellings through a lease or purchase. Such lease or purchase could permit these individuals to have a home and providing an opportunity to continue to farm.

(2) *Notification and processing.* If a feasible plan for restructuring debt cannot be developed using Primary Loan Service programs, the borrower will be advised by the use of Exhibit K with At-

tachment 1 of this subpart that the Agency will continue with the processing of Preservation Service programs, if applicable. A borrower who desires homestead protection must request it in accordance with § 1951.907. A borrower who meets the eligibility requirements of paragraph (b)(3) of this section will be permitted to retain possession of the homestead, in accordance with paragraph (b)(2)(ii) of this section, before title is acquired or under a lease with an option to purchase after title is acquired.

(i) *Determining homestead protection property.* (A) The homestead protection property will include the borrower's principal residence and not more than 10 acres of adjoining land that is used to maintain the borrower's family and a reasonable number of farm service buildings located on land adjoining the residence which are useful to the occupants of the dwelling.

(B) The servicing official will review the proposed homestead protection property. If the servicing official does not agree with the proposed shape or size of the property, an alternate configuration will be negotiated with the borrower.

(C) If the borrower and the servicing official cannot agree on the proposed shape and size of the property, the servicing official will make the determination.

(D) When the size and shape of the property is agreed upon and the borrower has been found eligible, the servicing official will request a licensed surveyor to survey the property, have a legal description prepared, and mark the property lines with permanent type markers.

(E) Appraisals will be completed in accordance with paragraphs (b)(6) and (b)(7)(ii)(B) of this section.

(ii) *Processing homestead protection before the Agency acquires title.* (A) A borrower will be considered for homestead protection when it is determined that the Primary Loan Service programs cannot resolve the delinquency. To process an application, the borrower must indicate the buildings and land to be included in the request for homestead protection. If determined eligible for homestead protection, the borrower and the servicing official will enter

into a Homestead Protection Program Agreement (Exhibit L of this subpart) to lease the property if and when the Agency acquires title. A copy of Form 1955-20, "Lease of Real Property," will be attached to the agreement as an exhibit.

(B) Concurrently with the execution of the preacquisition Homestead Protection Program Agreement, the borrower will deliver a completed Form RD 1955-1 to the Agency. The Agreement is subject to the provisions of subpart A of part 1955 of this chapter. If the Agency acquires title during the processing of a preacquisition Homestead Protection Agreement, processing of the agreement will be terminated and the owner will be given homestead protection rights pursuant to paragraph (b)(2)(iii) of this section.

(C) The Agency's obligation to lease the dwelling to the borrower will be contingent on the Agency's prior compliance with all State and local laws, ordinances and regulations governing the subdivision of land. If the Agency cannot satisfy the conditions within 2 years from the date of the agreement, the agreement (and the Agency's obligation to lease with option to purchase) will terminate. If an agreement has been entered into, but title to the property has not been conveyed to the Agency (or acquisition has been determined not to be in its financial interest), the Agency will continue with acceleration and foreclosure of the property. It is not the intent of the 2-year term of the agreement to limit the Agency's ability to foreclose on the property, provided that all the terms have been met except that title has not been conveyed.

(iii) *Application for homestead protection when the Agency acquires title.* When the Agency acquires title to the farm property, the borrower will be sent Exhibit M of this subpart, by certified mail, return receipt requested, no later than the date of acquisition. The borrower must request homestead protection by notifying the servicing official in writing not later than 30 days after the date of acquisition and must provide the information set forth in § 1951.907(e) of this subpart and indicate the buildings and land to be included in the request.

(iv) *Lease with option.* A lease with an option to purchase will be entered into with an eligible borrower on Form 1955-20 after the Agency acquires title to the property. Form 1955-20 will be completed in accordance with § 1951.911 (b)(8) of this subpart.

(3) *Eligibility.* The servicing official will make the determination on eligibility. To qualify for homestead protection, the borrower must meet the following requirements:

(i) An applicant must be an individual who is or was personally liable for the Farm Loan Programs (FLP) loan that was secured in part by the Homestead Protection property, or, if a non-borrower pledged the property to secure the FLP loan, the owner of the property. In either case, the applicant must be or have been the owner of the Homestead Protection property. A member of an entity who is or was personally liable for a loan that is or was secured by the Homestead protection property is considered an owner for homestead protection purposes, so long as either the member of the entity or the entity itself held fee title to the property.

(ii) When more than one member of an entity was personally liable for an FLP loan, each such member who possessed and occupied a separate dwelling as his or her principal residence, on property that is or was security for the loan may apply separately for homestead protection of their individual dwellings;

(iii) The applicant and any spouse must have received, from the farming or ranching operations, gross farm income reasonably commensurate with the size and location of the farm and reasonably commensurate with local agricultural conditions (including natural and economic conditions) in at least 2 calendar years during the 6-year period preceding the calendar year in which the application is made. Farms used for comparison purposes must be of similar size, type of operation and locality. For the purposes of §§ 1951.911(b)(3) (iii) and (iv) of this subpart, income from farming or ranching operations will include rent paid by a lessee of agricultural land during any period in which the borrower, due to

circumstances beyond his or her control, such as economic, natural disaster or health problems, was unable to actively farm that property. The borrower's records will be used in determining whether the gross farm income was reasonably commensurate with the farm size and location and local agricultural conditions. When applying for homestead protection, the borrower will give the servicing official at least 2 calendar years of records of planned and actual gross farm income for the 6-year period preceding the calendar year in which the application is made. If such records do not exist, they may be developed by the applicant and servicing official from information relating to yields, expenses and prices found in the borrower's county office case file, agency records, or other reliable sources;

(iv) The applicant and any spouse must have received, from the farming or ranching operations, at least 60 percent of their gross annual income in at least 2 of the 6 calendar years preceding the calendar year in which the application is made;

(v) The applicant must have continuously occupied the homestead protection property during the 6-year period preceding the calendar year in which the application is made, unless it was necessary to leave for a period of time not to exceed 12 months during the 6-year period due to circumstances beyond the borrower's control, such as illness, employment, or conditions that made the dwelling uninhabitable; and

(vi) The applicant must have sufficient income to make rental payments for the term of the lease and the ability to maintain the property in good condition, and must agree to all the terms and conditions set forth in paragraph (b)(7) of this section and in Form 1955-20.

(4) *Transfer of homestead protection.* An applicant's right to request homestead protection and rights under the Agreement or lease entered into pursuant to this section are not transferable or assignable by the applicant or by operation of law, except that, in the case of death or incompetency of the applicant, such rights and agreements shall be transferable to the spouse upon

agreement to comply with the terms and conditions of the lease.

(5) *Property requirements.* (i) The proposed homestead protection property tract must meet all requirements for the division into a separate legal lot as required by State and local laws. All environmental considerations required under subpart G of part 1940 of this chapter will be complied with.

(ii) Costs for a survey, legal description or other service needed to establish, appraise, define or describe the homestead protection property as a separate tract, will be paid for by the Agency. No repairs or improvements will be paid for by the Agency except as provided for in § 1955.64 (a) of subpart A of part 1955 of this chapter.

(iii) If necessary, the Agency will grant or retain for the benefit of adjoining property reasonable easements for ingress, egress, utilities, water rights, etc.

(6) *Appraisal.* The current market value of the homestead protection property shall be determined by an independent appraisal made within 6 months from the date of the borrower's application for homestead protection. The applicant will select an independent real estate appraiser from a list of appraisers approved by the servicing official. The cost of such an appraisal will be handled in accordance with paragraph (b)(5)(ii) of this section.

(7) *Terms of the lease and exercising the option.* (i) All leases will have an option to purchase. Any reference to a lease for homestead protection purposes will mean a lease with an option to purchase. The lease will be offered with an option to purchase on Form 1955-20 and will be for a period of not more than 5 years as requested by the applicant. A lease of less than 5 years may be extended, but not beyond 5 years from the date of the beginning of the term of the original lease.

(A) The amount of the rent will be based upon equivalent rents charged for similar residential properties in the area in which the dwelling is located.

(B) Lease payments will be retained by the Government.

(C) Failure to make lease payments as scheduled or to maintain the property in good condition shall constitute cause for the termination of all rights

§ 1951.912

of the lessee to possession and occupancy of the dwelling and property under this section. If a lease default is not cured within 30 days of notice, the servicing official will notify the lessee in writing of the termination of the lease and option.

(D) Any interference by the lessee with the Government's efforts to lease or sell the remainder of farm inventory property shall constitute cause for the termination of all rights of the lessee to possession and occupancy of the dwelling and property including the right to exercise the option to purchase.

(ii) Exercising the option to purchase.

(A) The lessee may exercise the option in writing at any time prior to the expiration of the lease by delivering to the servicing official a signed, written statement notifying the Agency that the lessee is exercising the option to purchase the property. Failure to exercise the option within the lease period will end the lessee's rights under the option to purchase.

(B) When the lessee exercises the option to purchase the property, the purchase price will be the current market value of the property. That value will be determined by an appraisal in accordance with paragraph (b)(6) of this section providing the appraisal is not more than 1 year old. If the appraisal is more than 1 year old, the current market value will be determined by a new appraisal requested in accordance with paragraph (b)(6) of this section.

(C) At the time the lessee exercises the option, the lessee must notify the servicing official if he or she wants to purchase the property for cash or finance it through a credit sale from the Agency.

(D) If a credit sale is involved, the applicant must furnish the servicing official the information required by § 1951.907 (e) to assist in determining whether or not the applicant has adequate repayment ability.

(8) *Rates and terms for a credit sale.* Terms for a credit sale of homestead protection property when the lessee is exercising the option to purchase will be in accordance with subpart J of this part.

7 CFR Ch. XVIII (1-1-07 Edition)

(9) *Closing.* A credit sale will be closed in accordance with subpart J of this part.

(10) *Conflict with State law.* In the event of a conflict between a borrower's homestead protection rights and any provisions of the law of any State relating to the right of a borrower to designate for separate sale or redeem part or all of the property securing a loan foreclosed on by a lender, such provision of State law shall prevail. A State supplement will be prepared as necessary to supplement paragraph (b) of this section.

(11) *Servicing homestead protection loans.* Homestead protection loans will be serviced as set forth in subpart J of this part.

[62 FR 10132, Mar. 5, 1997]

§ 1951.912 Mediation.

(a) *States with a USDA certified mediation program.* The FmHA or its successor agency under Public Law 103-354 is required to participate in USDA Certified State Mediation Programs. The purpose of mediation is to participate with farm borrowers, and their creditors, in an effort to resolve issues necessary to overcome the borrower's financial difficulties. Any negotiation of an FmHA or its successor agency under Public Law 103-354 appraisal pursuant to § 1951.909(i) of this subpart will be completed prior to mediation.

(1) FmHA or its successor agency under Public Law 103-354 shall participate in a USDA Certified Mediation Program under the same terms and conditions as other creditors. Decisions will not be binding on FmHA or its successor agency under Public Law 103-354 unless approved by the representative assigned by FmHA or its successor agency under Public Law 103-354 in accordance with paragraph (a)(4) of this section.

(2) FmHA or its successor agency under Public Law 103-354 will pay the same mediation fees to the USDA Certified State Mediation Board that are charged to all creditors that participate in mediation. The Contracting Officer (CO) will complete Form AD-838, "Purchase Order," to establish a mediation contract and submit Form FmHA or its successor agency under Public Law 103-354 838-B, "Invoice-Receipt